

IN THE UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

KAYLA GORE, et al.,

Plaintiffs,

v.

WILLIAM BYRON LEE, in his Official capacity  
as Governor of the State of Tennessee, et al.,

Defendants.

Case No. 3:19-0328

**PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION FOR  
AN EXTENSION OF TIME TO SERVE EXPERT DISCLOSURES**

Plaintiffs, by and through their undersigned counsel of record, respectfully respond to Defendants' Motion for an Extension of Time to Serve Expert Disclosures (Doc. 55), filed on February 19, 2020, as follows.

1. On February 24, 2020, Defendants produced disclosures for two experts—Edward Gray Bishop, State Registrar, and Vanessa Lefler, Director of Vital Statistics—pursuant to Rule 26(a)(2)(C) of the Federal Rules of Civil Procedure. On February 25, 2010, counsel for Defendants informed counsel for Plaintiffs that the request for an extension was not moot and that they believe they need an additional expert witness.

2. Plaintiffs do not oppose Defendants' request for an extension of time to serve their remaining expert disclosures.

3. Plaintiffs file this response, however, to correct Defendants' misleading statement that "Plaintiffs have responded to Defendants' discovery requests but have not produced responsive documents." *See* Doc. 55, at 1-2, ¶ 3. In fact, Plaintiffs produced approximately 920 pages of documents as part of their initial disclosures on July 12, 2019. Defendants served their

first discovery requests on Plaintiffs on November 21, 2019, to which Plaintiffs responded on January 10, 2020, following an agreed three-week extension.

4. On February 5, 2020, at the request of Plaintiffs' counsel, the parties conferred via teleconference regarding outstanding discovery issues. During this teleconference, Plaintiffs' counsel represented to Defendants' counsel that Plaintiffs would soon make a small production of additional documents but that (1) Plaintiffs had already produced most documents responsive to Defendants' requests on July 12, 2019, as part of their initial disclosures, and (2) several of the new documents were merely higher-resolution or better quality versions of those previously produced documents. It is disingenuous for Defendants' counsel to allege in support of their motion for an extension that Plaintiffs "have not produced responsive documents" when Plaintiffs have indeed done so more than seven months ago. Furthermore, in the light of Defendants' misstatement, Plaintiffs served the additional small production of responsive documents on Defendants on February 25, 2020.

5. In addition, Plaintiffs' motion for leave to amend Plaintiffs' Complaint, filed on January 9, 2020, remains pending. The proposed amendments to the Complaint include the addition of plaintiff Jaime Combs. As a result, Plaintiffs have not yet produced responsive documents pertaining to Ms. Combs.

6. Furthermore, Defendants' Motion neglects to acknowledge their own delinquency in the matter of document production. Plaintiffs served discovery requests on Defendants on September 20, 2019. Defendants responded to those requests on November 1, 2019, following an agreed four-week extension. Because of alleged technical difficulties, Defendants did not produce any documents with their response. The parties have since been working together to address the technical limitations imposed by the State's electronic systems. Only after Plaintiffs initiated

teleconferences to discuss these issues on December 20, 2019, and February 5, 2020, did Defendants make an initial production of documents to Plaintiffs on February 6, 2020, that is, at best, tangentially responsive to only one of Plaintiffs' various requests for production. Indeed, most of Plaintiffs' requests for production to Defendants remain outstanding.

WHEREFORE, premises considered, Plaintiffs respectfully file this Response to Defendants' Motion for an Extension of Time to Serve Expert Disclosures and requests consideration thereof.

Dated: February 25, 2020

Gavin R. Villareal\*  
Maddy Dwertman\*  
BAKER BOTTS L.L.P.  
98 San Jacinto Boulevard, Suite 1500  
Austin, TX 78701-4078  
Phone: (512) 322-2500  
Facsimile: (512) 322-2501  
gavin.villareal@bakerbotts.com  
maddy.dwertman@bakerbotts.com

Brandt Thomas Roessler\*  
BAKER BOTTS L.L.P.  
30 Rockefeller Plaza  
New York, NY 10112-4498  
Phone (212) 408-2500  
Facsimile: (212) 408-2501  
brandt.roessler@bakerbotts.com

Kathryn S. Christopherson\*  
BAKER BOTTS L.L.P.  
1001 Page Mill Rd., Bldg. One, Suite 200  
Palo Alto, CA 94304-1007  
Phone: (650) 739-7500  
Facsimile: (650) 739-7699  
kathryn.christopherson@bakerbotts.com

Respectfully submitted,

s/ John T. Winemiller  
John T. Winemiller  
MERCHANT & GOULD P.C.  
800 S. Gay Street, Suite 2150  
Knoxville, TN 37929  
Phone: (865) 380-5960  
Facsimile: (612) 332-9081  
JWinemiller@merchantgould.com

Omar Gonzalez-Pagan\*  
LAMBDA LEGAL DEFENSE AND  
EDUCATION FUND, INC.  
120 Wall Street, 19th Floor  
New York, NY 10005-3919  
Telephone: (212) 809-8585  
Facsimile: (212) 809-0055  
ogonzalez-pagan@lambdalegal.org

Tara L. Borelli\*  
LAMBDA LEGAL DEFENSE AND  
EDUCATION FUND, INC.  
730 Peachtree Street NE, Suite 640  
Atlanta, GA 30318-1210  
Telephone: (404) 897-1880  
Facsimile: (404) 897-1884  
tborelli@lambdalegal.org

Sasha Buchert\*  
LAMBDA LEGAL DEFENSE AND  
EDUCATION FUND, INC.  
1776 K Street NW, Suite 722  
Washington, DC 20006  
Telephone: (202) 804-6245  
sbuchert@lambdalegal.org

*Counsel for Plaintiffs*  
*\* Admitted pro hac vice*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was filed electronically using the Court's CM/ECF system, which provides electronic notice of the filing to all counsel of record, including:

Herbert H. Slatery III  
Attorney General and Reporter

Dianna Baker Shew  
Senior Assistant Attorney General  
dianna.shew@ag.tn.gov  
Sara E. Sedgwick  
Senior Assistant Attorney General  
sara.sedgwick@ag.tn.gov  
PO Box 20207  
Nashville, TN 37202

*s/ John T. Winemiller* \_\_\_\_\_  
John T. Winemiller